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EXAMINER

SHEIKH, ASFAND M

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/666,681
Filing Date: September 18, 2003
Appellant(s): SPEISER ET AL.

Joseph J. Want
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/22/2010 appealing from the Office action mailed 7/15/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 15-22.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,466,918

Spiegel

10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 15-22 are rejected under 35 U.S.C. 102(a) as being anticipated by Spiegel et al. (US 6,466,918).

Spiegel et al. disclose a method of providing listing recommendations to users of a network-based commerce system including a plurality of listings 120 arranged in a plurality of divisions 130, the method including: identifying a division 110 of the plurality of divisions 130 based on user interaction with the network-based commerce system; identifying at least one frequently used search term associated with the identified division 110; and providing a link to the user to listings 120 associated with each frequently used search term 110. See, in particular: col. 4, lines 43-67; col. 6, lines 5-60; col. 7, lines 6-67; col. 8, lines 33-59; and, Figure 1A.

Regarding claim 16, the method of Spiegel et al. includes communicating a web page to the user including a hyperlink to the listings associated with each frequently used search term. See, in particular, column 4, lines 61-65.

Regarding claim 17, in the method of Spiegel et al. the listings associated with each frequently used search term are listings that would be located if the user conducted a search of the network-based commerce system using each frequently used search term.

Regarding claim 18, in the method of Spiegel et al. the at least one frequently used search term is ranked in one of an ascending and descending order according to a number of occurrences of listings in a division associated with the at least one frequently used search term.

Regarding claim 19, the method of Spiegel et al. inherently includes periodically adding new listings and removing terminated listings prior to determining the number of listings in each division associated with each frequently used search term so that the ranking is dependent upon supply and demand for the listings.

Regarding claim 20, the method of Spiegel et al. includes searching the network-based commerce system using at least one frequently used search term when the user selects the link.

Regarding claim 21, in the method of Spiegel et al. the at least one frequently used search term is displayed according to rank in one of an ascending and descending order.

Regarding claim 22, in the method of Spiegel et al. one or more frequently used search terms are assigned to each of the plurality of divisions, the divisions being defined by categories.

(10) Response to Argument

The examiner notes the appellants respectfully submit that Spiegel does not establish a prima facie case of anticipation, because Spiegel fails to teach each and every element of appellants' claims, as arranged in the claims, and in as complete detail as in the claims. The examiner respectfully disagrees.

The appellant's argue that Spiegel fails to teach "identifying at least one frequently used search term associated with the identified division."

The examiner notes Spiegel discloses "identifying at least one frequently used search term associated with the identified division" (see at least, col. 7, lines 6-67). Further Spiegel discloses the Web site system includes software and database components that are used to collect information about the browsing and/or purchasing activities of users, and to use this information to automatically evaluate the popularity levels of specific item nodes and category nodes of the tree (see at least, col. 6, lines 5-10). Further the examiner notes Spiegel discloses that a "category" can be searched by a user and historical actions performed on each category is collected (see col. 6, lines 40-60). The examiner notes Spiegel further discloses category data nodes include data related to activity with the category (see col. 6, lines 21-29). The examiner notes a combination of this represents identifying one frequently used search term (e.g. identifying a popular category) associated with the identified division (see at least, col. 7, lines 6-24: the Featured Category) therefore the examiner finds these arguments not persuasive

The appellant's further argues that a category is not the same as a search term. The examiner respectively disagrees and notes that a category as interpreted can be a search term as it is used provide the activity of looking thoroughly in order to find something. Therefore under a reasonable interpretation a category is in fact a form of a search term therefore the examiner finds these arguments not persuasive.

The appellant's further argue that Spiegel fails to teach "providing a link to the user to listings associated with the at least one frequently used search term." The examiner disagrees. The examiner notes FIG. 1 depicts a link to featured categories based on the searching of users (see col. 6, lines 40-60 and col. 7, lines 6-67). The examiner notes under as interpreted Spiegel reads on the applicant's claimed invention, therefore the examiner finds these arguments not persuasive.

Therefore as shown above Spiegel, as interpreted, does indeed teach every claimed element found in Claim 15 therefore the examiner finds these arguments not persuasive.

Art Unit: 3627

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Asfand M. Sheikh/

Examiner, Art Unit 3627

Sunday, April 11, 2010

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin/vm/

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